

PATENT COOPERATION TREATY

PCT

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

(Chapter I of the Patent Cooperation Treaty)

(PCT Rule 44bis)

Applicant's or agent's file reference 1043P024IIWO	FOR FURTHER ACTION	See item 4 below
International application No. PCT/EP2005/009912	International filing date (<i>day/month/year</i>) 15 September 2005 (15.09.2005)	Priority date (<i>day/month/year</i>) 24 September 2004 (24.09.2004)
International Patent Classification (8th edition unless older edition indicated) See relevant information in Form PCT/ISA/237		
Applicant AICURIS GMBH & CO.KG		

1.	This international preliminary report on patentability (Chapter I) is issued by the International Bureau on behalf of the International Searching Authority under Rule 44 bis.1(a).																								
2.	This REPORT consists of a total of 6 sheets, including this cover sheet. In the attached sheets, any reference to the written opinion of the International Searching Authority should be read as a reference to the international preliminary report on patentability (Chapter I) instead.																								
3.	<p>This report contains indications relating to the following items:</p> <table style="width: 100%;"> <tr> <td style="width: 10%; text-align: center;"><input checked="" type="checkbox"/></td> <td style="width: 40%;">Box No. I</td> <td style="width: 50%;">Basis of the report</td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td>Box No. II</td> <td>Priority</td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td>Box No. III</td> <td>Non-establishment of opinion with regard to novelty, inventive step and industrial applicability</td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td>Box No. IV</td> <td>Lack of unity of invention</td> </tr> <tr> <td style="text-align: center;"><input checked="" type="checkbox"/></td> <td>Box No. V</td> <td>Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement</td> </tr> <tr> <td style="text-align: center;"><input checked="" type="checkbox"/></td> <td>Box No. VI</td> <td>Certain documents cited</td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td>Box No. VII</td> <td>Certain defects in the international application</td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td>Box No. VIII</td> <td>Certain observations on the international application</td> </tr> </table>	<input checked="" type="checkbox"/>	Box No. I	Basis of the report	<input type="checkbox"/>	Box No. II	Priority	<input type="checkbox"/>	Box No. III	Non-establishment of opinion with regard to novelty, inventive step and industrial applicability	<input type="checkbox"/>	Box No. IV	Lack of unity of invention	<input checked="" type="checkbox"/>	Box No. V	Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement	<input checked="" type="checkbox"/>	Box No. VI	Certain documents cited	<input type="checkbox"/>	Box No. VII	Certain defects in the international application	<input type="checkbox"/>	Box No. VIII	Certain observations on the international application
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<input type="checkbox"/>	Box No. VIII	Certain observations on the international application																							
4.	The International Bureau will communicate this report to designated Offices in accordance with Rules 44bis.3(c) and 93bis.1 but not, except where the applicant makes an express request under Article 23(2), before the expiration of 30 months from the priority date (Rule 44bis .2).																								

The International Bureau of WIPO 34, chemin des Colombettes 1211 Geneva 20, Switzerland	Date of issuance of this report 24 April 2007 (24.04.2007)
Facsimile No. +41 22 338 82 70	Authorized officer <div style="text-align: center; font-weight: bold;">Ellen Moyse</div> e-mail: pt05.pct@wipo.int

PATENT COOPERATION TREATY

TRANSLATION

From the
INTERNATIONAL SEARCHING AUTHORITY

PCT

WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY

(PCT Rule 43bis.1)

To:

Date of mailing (day/month/year) **See form PCT/ISA/210**

Applicant's or agent's file reference 1043P024IIWO		FOR FURTHER ACTION See paragraph 2 below	
International application No. PCT/EP2005/009912	International filing date (day/month/year) 15.09.2005	Priority date (day/month/year) 24.09.2004	
International Patent Classification (IPC) or both national classification and IPC C07K5/08, A61K38/06			
Applicant AICURIS GMBH & CO.KG			

1. This opinion contains indications relating to the following items:

- ☒ Box No. I Basis of the opinion
- ☐ Box No. II Priority
- ☐ Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- ☐ Box No. IV Lack of unity of invention
- ☒ Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- ☒ Box No. VI Certain documents cited
- ☐ Box No. VII Certain defects in the international application
- ☐ Box No. VIII Certain observations on the international application

2. **FURTHER ACTION**

If a demand for international preliminary examination is made, this opinion will be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA") except that this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1bis(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of 3 months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA/220.

3. For further details, see notes to Form PCT/ISA/220.

Name and mailing address of the ISA/EP	Authorized officer
Facsimile No.	Telephone No.

WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY

International application No.

PCT/EP2005/009912

Box No. I Basis of this opinion

1. With regard to the language, this opinion has been established on the basis of the international application in the language in which it was filed, unless otherwise indicated under this item.

☐

This opinion has been established on the basis of a translation from the original language into the following language

_____, which is the language of a translation furnished for the purposes of international search (under Rule 12.3 and 23.1(b)).

2. With regard to any nucleotide and/or amino acid sequence disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of:

a. type of material

☐

a sequence listing

☐

table(s) related to the sequence listing

b. format of material

☐

in written format

☐

in computer readable form

c. time of filing/furnishing

☐

contained in the international application as filed.

☐

filed together with the international application in computer readable form.

☐

furnished subsequently to this Authority for the purposes of search.

3. ☐ In addition, in the case that more than one version or copy of a sequence listing and/or table(s) relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.

4. Additional comments:

The numbering of the documents cited in this opinion is
the same as that in the international search report.

WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY

International application No.

PCT/EP2005/009912

Box No. V	Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement		
1. Statement			
Novelty (N)	Claims	1-14	YES
	Claims		NO
Inventive step (IS)	Claims	1-14	YES
	Claims		NO
Industrial applicability (IA)	Claims	1-13	YES
	Claims	14?	NO
2. Citations and explanations:			
<p>The PCT Contracting States do not have uniform criteria for assessing the industrial applicability of claim 14 in its present form. Patentability may also depend on the wording of the claims. The EPO, for example, does not recognize the industrial applicability of claims to the medical use of a compound; it may, however, allow claims to the first medical application of a known compound or to the use of such a compound in the manufacture of a drug for a new medical application. The present application satisfies the criterion of PCT Article 33(4) in so far as the subject matter of claims 1-13 is regarded as industrially applicable.</p> <p>The present invention relates to antibacterial macrocycles of the formula (I) (see claim 1) as analogues/derivatives of biphenomycin B.</p> <p>D1 discloses similar antibacterial macrocycles, but the radical designated R³ in the present application is different. The purpose of table A on page 267 of the application is admittedly only to provide a comparison with biphenomycin, although the closest prior art is really D1. However, the IC₅₀ values indicated for</p>			

WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY

International application No.

PCT/EP2005/009912

Box No. V

Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability;
citations and explanations supporting such statement

"*S aureus* 133 translation" are comparable with the data in D1, table A on page 167. The activity of the examples according to the invention is distinctly higher than that of the examples in D1, and this is regarded as not foreseeable.

The present application thus satisfies the criteria in PCT Article 33(2)(3) because the subject matter of claims 1-14 is novel and involves an inventive step (PCT Rule 65.1-65.2) in relation to the prior art as defined in the Regulations (PCT Rule 64.1-64.3).

WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY

International application No.

PCT/EP2005/009912

Box No. VI Certain documents cited

1. Certain published documents (Rule 43bis.1 and 70.10)

Application No. Patent No.	Publication date (day/month/year)	Filing date (day/month/year)	Priority date (valid claim) (day/month/year)
WO 2005/033129	14.04.2005	22.09.2004	01.10.2003
			16.12.2003

2. Non-written disclosures (Rule 43bis.1 and 70.9)

Kind of non-written disclosure	Date of non-written disclosure (day/month/year)	Date of written disclosure referring to non-written disclosure (day/month/year)
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See form 210